
(1974) 03 KL CK 0008
In the High Court Of Kerala
Case No : Second Appeal No. 774 of 1970

R. Sivaram

APPELLANT

Vs

T.A. John and Others

RESPONDENT

Date of Decision : 28-03-1974

Acts Referred:

Contract Act, 1872 — Section 23

Citation : AIR 1975 Ker 101

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : S. Easwara Iyer, E. Subramoniam, Annamma Alexander and T.T. Uthup, for the Appellant; K. Chandrasekharan and T.K. Vanajakshy, for the Respondent

Final Decision : Allowed

Judgement

G. Viswanatha Iyer, J.—In this second appeal the only question to be decided is whether the pronote sued on was executed by defendants 1 and 2 to stifle a prosecution or is otherwise vitiated on the ground that it is not supported by consideration. The facts as emerged from the pleadings of the parties and disclosed in the evidence are the following:

One Antony was an employee of P. S. N. Motor Ltd. He was found to have stolen spare parts from the store of the above company. On questioning him it was learnt that he used to sell those articles in the shop called Taj Distributing Company belonging to defendants 1 and 2. On this information on questioning the 1st defendant he stated that they had purchased articles from the above Antony. When the company wanted to take legal proceedings the 3rd defendant interfered and defendants 1 and 2 agreed to execute the pro-note for the money value of the articles purchased by them and as a mode of payment four cheques of Rs. 500/- each were executed by them to the 3rd defendant who undertook to collect the amount and pay it to the company. One cheque for Rs. 500/- alone could be cashed and the rest were dishonoured. The third defendant endorsed

the pro-note to the plaintiff who is the Administrative Officer of the company. When a suit notice was issued to defendants 1 and 2 they replied stating that the pronote was executed under intimidation. It was also stated that the company was about to take criminal prosecution and the pronote was executed under threat, coercion and undue influence. They repeated these defences in the suit. The learned Munsiff found that the case of threat, coercion and undue influence or intimidation has not been proved. The learned Munsiff also found that there is every reason to believe that defendants 1 and 2 executed the pronote voluntarily in order to escape civil or criminal liability for purchasing the articles. If they had not agreed to execute the pronote the company would have taken steps to realise the value of the goods. That was avoided by their executing the pronote. In these circumstances the Munsiff held that even though no cash was actually given to defendants 1 and 2 it is fully supported by consideration as the amount of the note represented the value of the goods stolen from the company and purchased by defendants 1 and 2. So, he decreed the suit for the balance amount due. On appeal the District Judge agreed with the Munsiff that the evidence on record and circumstances of the case lead to the conclusion that defendants 1 and 2 executed Ext. P1 promissory note to escape civil or criminal liability consequent to their purchasing stolen spare parts from the employee of the company. But, on these facts he took the view that the pronote was executed to stifle a prosecution and therefore is illegal as opposed to public policy as stated in Section 23 of the Contract Act. On this view he dismissed the suit. Hence this second appeal.

2. I am afraid the learned District Judge has gone wrong in his conclusion that the agreement is to stifle a prosecution. The law on the point has been stated by the Supreme Court in *Ouseph Poulo and Others Vs. Catholic Union Bank Ltd. and Others*, . In the light of that decision the position is as follows, No criminal complaint had been filed by the company here. No doubt, the company had lost the goods and the goods had gone into the hands of defendants 1 and 2 when they purchased them from the employee. Defendants 1 and 2 do not get any legal title to the goods because the employee who sold the goods had no title. If they could not return the goods to the company they are liable to pay their value. If they refuse to pay the company can take legal steps to recover the value. The company had not decided as to what legal steps they should take. They can take civil or criminal proceeding to get the remedy. At that stage there is nothing illegal in the company accepting the pronote in satisfaction of their claim. It cannot be said that the consideration for the pronote is to stifle a prosecution. There is a difference between the motive for the agreement and the consideration for it. At best the motive for the pronote may be to avoid a legal proceeding. That is not the consideration for the pronote. This difference has been overlooked by the learned District Judge. There is nothing illegal or opposed to public policy as stated in Section 23 of the Contract Act in the transaction. The pro-note is supported by consideration and hence the learned Munsiff is right in decreeing the suit.

3. In the result, I allow the second appeal, set aside the judgment and decree of the lower appellate court and restore that of the trial court. The appellant is entitled to his costs from the contesting respondents.